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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 17

CHARLES PAUL, Director of Agriculture of the State of California, and STANLEY MOSK, Attorney General, State of California, *Appellants,*

vs.

UNITED STATES OF AMERICA, *Appellee.*

On Appeal From the United States District Court for the Northern District of California, Southern Division.

Reply of Dairy Institute of California, Milk Industry Foundation, Alameda County Milk Dealers Association, San Francisco Milk Council, Santa Clara County Milk Dealers Association, Dairymens Service Association, and General Dairy Industry Committee of Southern California, as Amici Curiae, to Memorandum for the United States in Response to Jurisdictional Statement.

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Interest of Amici Curiae.

The interest of present *amici* has been stated in detail in the brief previously filed by such *amici* in support of appellants' jurisdictional statement.

ARGUMENT.

This Case Urgently Requires Decision by the Supreme Court of the United States of Important Questions of Law; the Case Should Not Be Disposed of in the Summary and Partially Non-Adjudicative Fashion Proposed in the Memorandum Filed by the Solicitor General in Response to Appellants' Jurisdictional Statement.

Despite the importance of the issues involved, the District Court below reached its decision in a summary, injunction proceeding without trial or the taking of evidence except in affidavit form. On March 27, 1961, after protracted and fruitless efforts to settle findings of fact and conclusions of law prepared by the United States, the District Court struck from its Memorandum Opinion its direction to the United States to prepare such findings of fact and conclusions of law and adopted the balance of its memorandum Opinion as the District Court's findings of fact and conclusions of law [R. 819]. Even as thus limited the Memorandum Opinion contained erroneous factual statements (J. S. App. pp. 24-28).

The Solicitor General now proposes that this type of summary handling of the case be continued through summary affirmation of the judgment of the District Court as to State regulation of wholesale pricing applicable to sales of fluid milk to federal agencies (Memo. pp. 5-6). On the other hand, the Solicitor General proposes that California regulation of minimum producer prices applicable to such sales of fluid milk now be permitted because of a change in federal procurement policy since the time

gt entry of the District Court judgment, but without any adjudication of the *right* of the State of California to enforce such minimum producer pricing, and without any concession by the Federal Government of such right in the State of California.[1]

Despite inconsistent assertions elsewhere in the memorandum for the United States,[2] the described suggestion of the United States tacitly, but nevertheless firmly, concedes that there is no conflict between the Armed Services Procurement Act and enforcement under the California Milk Stabilization Act of minimum producer pricing regulations. The same tacit concession is also made as to California regulation of minimum wholesale pricing, since the only reason suggested in the memorandum for the United States for affirmation of the District Court judgment as to minimum wholesale prices is the claim that the territories in question are under exclusive federal jurisdiction (Memo. pp. 5-6). It is obvious that the District Court decision was based primarily upon a conclusion that the California Milk Stabilization Act is invalid, when applied to sales of fluid milk to federal agencies, because of conflict between that act and the Armed Services Procurement Act (J. S. App. p. 54). It is equally obvious from the jurisdictional statement and supporting *amici* briefs (and from the memorandum filed for the United States) that there is no such conflict. This important question of law urgently requires decision by the Supreme Court of the United States.

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[1]Memo. pp. 5, 13, fn. 11.

[2]Memo. pp. 4-6, fn. 5, 13, fn. 11.

Likewise the question of exclusive jurisdiction over the military areas involved, as between the United States and the State of California, requires decision by the Supreme Court of the United States, particularly after the summary disposition of this issue by the District Court in its Memorandum Opinion. The California Statute of 1872 upon which the United States relies (J. S. App. pp. 104-5) is a consent by the State to federal purchase of *land*, without any express cession, or consent to acquisition, of *jurisdiction*. Additionally on this issue, appellants rely upon a California Statute of 1897 (J. S. App. pp. 105-6) which comprehensively applies to every known method of acquisition by the United States of land for military purposes. Appellants accordingly assert with merit that the 1872 statute conferred no jurisdiction upon the United States over California land purchased by the United States, but that even if the contrary were true, the 1897 statute qualifies the earlier 1872 statute. *James v. Dravo Contracting Co.*, 302 U. S. 134, supports appellants' contention. This case is distinguished in the memorandum for the United States solely on the argument that the two California statutes are separate enactments, whereas in *James* they were all part of one statute (Memo. pp. 9-10). The circumstance that the 1897 statute was later in time than the earlier 1872 statute strengthens rather than weakens appellants' contention that the later statute qualifies the earlier statute, and in any event there were two separate statutes in *James* but codified into one statute prior to the time the case arose (302 U. S. 134, at p. 145). Here against the extremely important

question of jurisdiction over the military areas involved requires decision by the Supreme Court of the United States.

The suggestion in the memorandum for the United States for summary disposition of this case (by permitting for the time being California's enforcement of producer fluid milk pricing regulations, but prohibiting, by judgment, California's enforcement of wholesale fluid milk pricing regulations) is further without merit for the following reasons:

(1) Milk distributors required to return to producers the minimum producer price from federal sales, but without any regulation of minimum wholesale pricing as to such sales, must either absorb losses or get out of the federal business altogether. Such losses inevitably will impair distributors' efficiency with consequent injury to consumers, particularly in an industry the inherent lack of economic stability in which caused the California Legislature to protect consumers by enactment in the first instance of the Milk Stabilization Act (Cal. Agr. Code, Secs. 4201-4204).

(2) The described losses will also occasion contrary again to the stated purposes of the Milk Stabilization Act) unusual disruption of market conditions because of the large volumes of federal purchases, and will tend to drive out of business smaller distributors whose limited resources will not permit them to absorb losses from federal sales and stay in business.

(3) Enforcement of minimum producer prices by the Director of Agriculture as to federal sales will

*See, e.g., Amicus Brief, Petaluma Cooperative Creamery, pp. 2-4.

be rendered, as it already has been, most difficult by inability to enforce minimum wholesale prices (Cases cited, Brief of present *amici*, p. 5, fn. 9).

(4) There is no distinction, in effect upon federal purchasing, between the minimum producer pricing provisions and the minimum wholesale pricing provisions of the California Milk Stabilization Act, this being the position of the United States in the District Court below and the holding of the District Court (Original Record, pp. 11; 670-672).

(5) The California Milk Stabilization Act requires the concurrent existence of both its minimum producer pricing and its minimum wholesale pricing provisions (Cal. Agr. Code, Secs. 4351, 4351.5).

(6) While prohibition of California enforcement of minimum wholesale fluid milk pricing regulations as to federal sales is attended by substantial detriment to the statutory policy of the State, to consumers, and to the dairy industry, there is no substantial financial detriment to the United States from permitting California enforcement of such regulations, as only 30% of the total volume of fluid milk purchased by federal agencies in California is purchased with appropriated moneys for troop issue.[4]

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[4] R. 814, 816, 817.

Conclusion.

It is accordingly again submitted that appellants' jurisdictional statement presents substantial issues requiring decision by this Court, and not the summary and partially non-adjudicative disposition of this case suggested in the memorandum for the United States.

Dated: Pasadena, California, December 29, 1961.

Respectfully submitted.

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